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THE FUTURE OF COASTAL ZONE MANAGEMENT:
THE 1980 AMENDMENTS.

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INTRODUCTION

The Federal Coastal Zone Management Act of 1972 (P.L.98-583)¹ is currently being questioned on its validity, purpose, funding, wording, and accomplishments in carrying out national policies for the benefit of the U.S. coastal zones.

All the legislation promulgated for management of coastal resources, the agencies involved in coastal zone management, and the groups participating in these actions have been challenged in recent months and have subsequently been evolving in their functions. Partly because of an unsure energy or economic future, new initiatives are being discussed and reviews of past and present programs have started. Traditional land-use decision-making power is being questioned against the goals of a greater national plan. The day-to-day "national interest" questions are not being dealt with directly by the average citizen. What remedies are available and how they could be realized through the present federal laws and organizational structure are areas which must be discussed now if we are to see a promising future for our coastal resources.

This scenario started in the late 60's and early 70's when the recognition that the coastal zone was an area of intensive use conflicts had prompted several congressional attempts to enact broad controls over land and water use decisions. The legislative attempts were developing the nations natural resource management ability for recreational land development, estuary protection, ocean development, and land-use planning in general.² The Coastal Zone Management Act of 1972 (CZMA) contained all of these ideas.

The CZMA was a congressional mandate to preserve, protect, develop, and restore or enhance the U.S. Coastal zone and it's resources, to help

states manage their CZR through development of an appropriate program and to coordinate Federal activities.³ Set up as a voluntary program with federal funding as part of the incentive, the CZMA called for the comprehensive planning for, and management of, coastal resources and coastal dependent uses. The main idea was to develop a process-oriented plan of action so that decisions on any activity which significantly effected the coastal zone could be made in the simplest and most complete way. The Act is, among other things, an exercise in creative intergovernmental relations because it emphasizes an administrative state level review of activities rather than a specific regulatory approach to implement a state program. Because of the variety of individual state requirements, specific guidelines would have been hard to develop in the CZMA so states were given a choice of format which they could use to review local community planning.⁴ Against the historical precedent, this meant some of the local and traditional land-use decision-making power was to be reverted to a state level where a broader outlook would hopefully be possible.⁵

The Office of Coastal Zone Management (OCZM), part of NOAA, has given out approximately \$68 million in 305 funds to all the thirty-five states and territories eligible for these funds, and almost all have finished with the planning stage.⁶ In return 19 states and territories have approved programs, which cover some 60% of the U.S. coastline, with a chance of 5-10 more programs being approvable within this next year.⁷ There have also been numerous projects and several hundred million dollars outlaid by OCZM under various other provisions of the act.⁸

States have taken widely divergent approaches in developing their CZM programs. It seems that some have been lax while others have been aggressive. In several cases there seems to be a lack of real legis-

lative authority. Some states are believed to lack strength in their programs because there was, or is, a lack of federal guidance to specify how plans were to be made or implemented.⁹

Possibly for this same reason, little concensus has emerged as to what kind of organizational structure would be most appropriate for the state-level administrative structure, which seems to have been difficult to design. Reasons for this disparity are that each state has different constituent interests, different resource utilization strategies, and different administrative philosophies.¹⁰ (John Lyons believes one of the major ingredients of success of the state plan in Rhode Island, was to educate people with the 305 funds.)¹¹

It is believed that some states would have developed fairly good programs without participating in the program, but at least two states found the impetus from the CZMA to be very important.¹² Then there are those several states finished with the planning stage who have not developed any program because they have run into difficulties (mainly political) which preclude any chance of having a program approved either in their respective state legislatures or by the OCZM.¹³ Some are dealing with a time factor because the states who wish to use the federal funds must hurry before the 305 appropriations stop in September of this year. There is a grace period built in though so the unused funds that have been granted will not have to be returned immediately and instead could be used within the following fiscal year.¹⁴ An added incentive is that after approval of the State CZMP, the state is then eligible for the 306 administrative grants and is entitled to federal consistency determinations.¹⁵

There has recently been a plethora of written opinions on the future

of CZM. The reason for this dialogue is that the CZMA is currently being discussed in Congress as part of the process for reauthorization of funds for the act's implementation. The congressional process should determine what the objective of the CZMA should now be and what amendments should be made to the Act to realize that goal. Being challenged or questioned is the original purpose of the Act viewed against its accomplishments to date. There are many sides to the arguments for the reasons Knecht describes;

"The coastal zone management program is ambitious in it's goals. Almost unique among government programs it attempts to deal with a diversity of complex issues in an integrated fashion. In addition, it seeks to ensure adequate representation in the decision making process of all affected interests and levels of government. Given the complexity of this program it is not surprising then that differences exist as to the extent to which the goals of the Act are being achieved". 16

Generally the changes being called for ask for new grant funding and new procedures for handing them out, more specificity in the state programs in a number of areas, and greater intergovernmental coordination and cooperation over their actions which effect the coastal zone.

One problem in making certain judgements on the Act is that experience in implementing either the state plans or the federal consistency provisions has been minimal to date and no real trends have become apparent. When discussing future goals, any dialogue should stress management options and the CZMA's ability to accomodate them because the implementation phase is starting and we must be prepared when new circumstances call for new directives.

There will probably be no large changes in the Act. This is deduced by the fact that this is an election year and decisions which effect the use of coastal zone resources, which are public goods used by a widely

scattered populace, are made in a political context with large consequences, meaning any changes could easily benefit or harm one group or another.

An evaluation of the strength or validity of all the amendments proposed by the many interest groups involved would not be simple (or helpful). However, some of the positions taken and changes proposed could be useful as indicators of the direction that coastal zone management will turn to even if the amends are not incorporated into the CZMA.

It is important to watch the congressional process as it unfolds to discover who will benefit most or as we hope with our system of government, if all sides are equally represented and their needs equally addressed.

PROVISIONS OF THE COASTAL ZONE ACT RELEVANT TO DISCUSSION

Sections 305, 306, & 307

Planning and management are two different but inter-related exercises, the later using what is developed with the first. The Coastal Zone Management Act describes this two step approach within separate sections of the Act. The first coming under section 305 while the implementation of the planning effort comes under section 306. As an incentive to participate in this voluntary program, separate federal funds and technical assistance are given for each exercise along with a promise that after a program was approved the state would be eligible for consistency determinations under section 307 provisions.

The management program development grants section (305) outlines the procedures for obtaining planning grants. The grants (a possible 4, 80% matching fundgrants) are given out by the DOC/NOAA/OCZM to those designated state agencies that are developing programs which include the specific requirements outlined in 305(b). These nine requirements are; an identified boundary, definition of permissible uses, an inventory of areas of particular concern, the means to exert control, broad guidelines for priorities, the proposed organizational structure, planning for beach access, a planning process for energy facility siting, and a planning process for assessing beach erosion. There are those who feel there was not enough stress on specific or affirmative planning, but there is nothing in section 305 that requires such plans.

Successful incorporation of these requirements into a plan and the subsequent approval by the OCZM entitles the state to administrative grants given out under section 306. Before receiving approval however, the state

must have met the stipulations described in 306(c), (d), and (e). The first, 306(c), is a directive to allow; 1) full participation and input from all and any parties who are or could be involved and effected, 2) the plan must be consistent with section 303, the national policy sections, 3) planning for coordination and continued consultation with areawide, interstate, and local government, 4) public hearings, 5) the governor's approval of the plan, 6) the designation of a lead agency in the state, 7) evidence that the state is organized to implement the program, 8) that the lead agency is a state level authority, 9) adequate consideration of national interest in siting and planning for facilities, and 10) procedures for designating areas for preservation or restoration. 306(d) requests the necessary authority to administer and ensure compliance of the regulations, to resolve conflicts, and to acquire interest in coastal real estate, and 306(e) describes the three possible ways for state level regulation or review over local actions. The three ways are direct state level regulatory authority, under local regulations promulgated state guidelines and subject to review, or local implementation with a state level review for consistency. The act does not require any enabling legislation per se but asks that the state's lead agency at least have the minimum legal authority with which to implement the program. Legal authority for many of the state programs comes from existing state laws and memorandums of understanding between the state's agencies. Many seem to disagree that this method has helped or even that this has been what was originally called for.

Coordination and cooperation, section 307, is probably the most challenging legal feature of the act and so has been the object of much attention and discussion. Federal consistency was thought to be an additional inducement for developing states plans because after approval of a state plan federal actions within and effecting the CZ must be conducted in a manner

consistent with the plan.

A consistency determination can apply to most every federal agency activity or support of activities, development project, federal license or permit, and federal assistance to local or state agencies. The wording is "directly effecting the CZ" or "affecting land or water use" or development. Administratively this has been translated to "significantly effecting" the CZR.¹⁷

The provision is balanced by the fact that no other federal act or agency jurisdiction is superceded or modified, and all lands under federal trust are excluded. Further, to obtain approval of a program and so the right to demand consistency, the state must have considered the views of the federal agencies involved in its coastal zone. This means early and close cooperation with those agencies.

In practice, consistency has served to mitigate rather than stop actions and in general has meant a more thoughtful and calculated approach to actions effecting the coast. One of the authors of the provisions, Michael Shapiro, stated the original interpretation was 307 (c) (1)&(2) were broad enough to include either state or Federal determinations of consistency.¹⁸ At the urging of the Office of Management and Budget and the Federal agencies, OCZM decided to give Federal agencies authority so that if a dispute should arise, the State would have the burden of proof in court.¹⁹ In the event of a conflict the Secretary of Commerce could have over-riding power, but OCZM decided the Secretary of Commerce should serve as a mediator. This has only been tried once to date. This was a recent action between the state of California and the Department of Interior. It did clarify some of the consistency provisions but not in the way that California desired. California wanted lease sale notifications to be subject to consistency. However this is not the final judgement since the

Department of Justice, when asked for an opinion earlier in the dispute, had ruled in favor of California. This seems to show that neither the act nor its legislative history have given any guidance concerning the substantive differences in the variety of definitions and terms used in section 307.²⁰

THE CONGRESSIONAL HEARINGS

Are the plans developed by the states and the resultant changes really constructive and can they deal with the present conflicts over utilization of coastal resources? There are varied opinions. Some, such as the former administrator of the OCZM, Robert Knecht, believes the act has done quite well;

"... the processes being put in place as a part of the coastal management effort are beginning to make a difference. Encouraging signs are appearing that coastal development is being managed more rationally than before, though much more remains to be done in this area." 21

When compared against the criticisms of others however this viewpoint and the accomplishments of the act seem to pale.

An important sounding board for these varied opinions and so an excellent way to look for new trends is the congressional reauthorization and oversight hearings that are currently in progress. The House Subcommittee on Oceanography and the Senate Commerce Committee has been dealing with the issue recently and it is presumed that the act and its amendments will be on the floor of both the House and Senate sometime in the next few months.²² Most of the discussion at the hearings and most of the amendments proposed deal with the provisions of the act discussed previously, sections 305, 306, & 307.

The Proposed Amendments

There are many groups, individuals, and voices asking for amends to the CZMA so to facilitate this discussion they are grouped as follows; Federal administration, Federal agencies, Federal Advisory Committee, members of Congress, State government, Private Industry, Environmentalists or Conservationists, Local Government and community groups.

Federal Administration

President Carter - In Carter's environmental message²³, he asked for

several amendments and wants to reauthorize 306 administrative funds in a phase-down form. Carter would like to build on the present state programs to achieve national coastal management goals by amending the CZMA to establish specific national coastal policies, i.e., protect ecologically fragile areas, manage development in the coastal zone, provide predictable siting processes, increase public access to the coastal zone, coordinate and simplify government decision-making, and preserve and restore historical, cultural, & aesthetic coastal resources. To obtain these goals Carter would like to link future funding with these objectives.

OCZMAs administrators of the CZMA the OCZM agrees with Carter's suggestions, and if the Act cannot be amended OCZM is most likely to try administrative changes to obtain the desired results. Knecht, the former administrator of OCZM, would like OCZM to work with states without plans.²⁴ To this end Dallas Miner suggested using states with approved plans to help those states without.²⁵ Basically OCZM would like to see greater predictability in the state programs and better defined mediation techniques.

Federal Agencies ²⁶

The Environmental Protection Agency sees a problem when one facility requiring several federal permits is subject to many consistency determinations. To alleviate this problem the Environmental Protection Agency would like to see the requirements for approval of state programs tightened up. On the other hand, EPA believes the CAA and the CWA requirements have not been successfully incorporated into state programs as required by 307(f).

The USCG (DOT) believes all its missions are in the national

interest and therefore should be exempt from 307 consistency decisions. They would like an administrative decision to so oblige their position. In particular USCG would like 307 amended so that there would be no need for federal consistency for activities on government-leased property.

The Department of Interior has several missions which effect the Coastal Zone, consequently most of their suggestions deal with the consistency provisions and related national interest. DOI would actually like no major changes with 307, especially not the changes which have been suggested for 307(c) (3) (b) which DOI calls the Hostage provision. Their reasoning is that holding up licenses and permits until consistency is found for the whole OCS development plan is costly to the industry. The only alteration DOI suggests is to clarify 307(f), the CWA & CAA requirements. Also suggested is a more explicit role for federal agencies to describe ⁱⁿ what is the national interest. Then the DOI would like to see a tie between a state's funding and achievement of the national interest thereby allowing DOI a greater role in the outcome. In general DOI wants a more substantial role for Federal agencies in the implementation and evaluation of state coastal zone management plans. Any changes to the plans should be subject to federal agency review in their opinion. DOI would also like clarification of "regional benefits".

The Army Corp of Engineers basically ~~wants to know how~~ any program will actually be implemented and how consistency will be applied. They feel section 306(c) (8) is difficult to interpret because of competing demands so they would like more detail from each state as to how the state plan serves the national interest. Any changes to a state plan(306(c) & (g))should be treated as amendments. On consistency, ACE would like to see a Regional approach to multi-state projects, in other

words, the establishment of smooth, efficient, and consistent methods of certifying consistency. In addition, if the state certifies consistency this should not mean that the federal agency must approve the permit, in their opinion.

The Office of Management and Budget has cleared the administrations proposals for submittance to Congress. Overall appropriations authorized under OMB clearance total around 400million dollars over the next eight years.

Advisory Committees

The National Advisory Committee on Oceans and Atmosphere would like²⁷ a stronger federal role, but realizing the potential conflicts, would like Congress to start on it now, to possibly have it accepted sometime next year. NACOA has suggested one of the more innovative approaches to amending the CZMA. They want a voluntary third phase in planning and management to address three areas, more protection for sensitive areas, a clearer direction for development, and a case-by-case decision-making process defined. Also needed is a limited, mandatory provision for non-participating states to regulate federal activities in the state's coastal zone, (subject to over-ride by Secretary of Commerce). On consistency, they would like states to have the final determination, because the legislative history is unclear who should have last say. This would also be an important incentive to the states.

The Coastal Zone Management Advisory Committee in 1978 saw a lack of state program specificity, they wanted to require performance standards, and they suggested the phase down of future funding under 306.²⁸ The current CZMAC endorses the administrations position, but is concerned over long-term protection of resources.²⁹ Within a couple of years, after more experience under 306, they would like a decision to be made as to

how this can be done, possibly with mandatory controls. Again because of the lack of experience and because the present mediation techniques seem to be the best approach they would like to hold-off on changes to 307. Steve McMillan, a member of the CZMAC, thinks states should have the flexibility to direct efforts towards particular needs.

The Council on Environmental Quality in it's tenth annual report³⁰ thought a voluntary program dependent on state initiatives with ambiguous and poorly administrated consistency has left large gaps in protection of resources. They are not one of the CZMA's strongest supporters.

Congressional Members

Congressman Studds (D-Mass.) is heading up the Subcommittee on on Oceanography, so his views are somewhat important. He is reported to have wanted a mandatory program but realizes there is not much support for that effort. He would also like to see a stronger consistency provision that would protect states' rights.³¹ A bill has been introduced by Murphy and Studds³² to include in the 306 requirements the areas lost in 309, 310, and 315(2) which OMB said they would not recommend for funding. Some of the Subcommittee staff members think the tie of funding and 303 is a good concept.

Senator Hollings (D-SC), is heading up the Senate Committee on Commerce, Science, Transportation. He thinks that States didn't pay attention to Federal needs before, but feels the 305 programs have been very successful. He believes the 305 funding could now be dropped. In the program implementation, Hollings feels there is a need for a one-stop permitting process to help with intergovernmental and industry coordination and cooperation. He would also like a stronger federal consistency, and a better description of national interest, regional benefit, and areas of particular concern.³³

Other senators and congressmen have voiced their opinions, but their ideas are as varied as their constituencies. One idea which has not had a wide backing but is interesting is the suggestion of Sen. Stevens (R-AK) who wants a regional approach towards implementation of the Act, similar to the regional councils of the Fishery Conservation and Management Act. He says this is ^{nessesary to} allow more reasonable facility siting process and because pollution and natural disasters cross state lines.³⁴

State Governments³⁵

In general most states would not like tying any provisions, such as the national interest and the special areas of interest mentioned in Carter's message, to future funding. Most do not want changes with section 307 either. A noticable exception to the later is California who has had some experience with the provision as mentioned before. They had originally wanted the provision unchanged but after the recent exchange with the DOI, they feel the provision is not satisfactorily accounting for state's rights. Maine has asked for a reversal of the consistency provision where a state makes the first consistency determination which is then followed by federal agency review. Texas believes the consistency provision should allow positive state consistency determinations as a more substantive reason to participate at all in CZM. Mass. wants more detailed regulations to determine when Consistency review begins, because federal funding requests often do not specify what certain funds will be used for and so makes it difficult to know whether the provision applies.

California wants no link between funding and the new provisions because as they see it, the balance is delicate as it is between the many interests they must content with. In this same regard Florida feels that if standards of a substantive nature rather than procedural

are amended to the CZMA they must be flexible. State managers must be able to develop and implement programs that are acceptable to their political constituencies. The New England/New York Task Force feels there should be no amends because it is hard enough getting a balanced program under the current requirements. Also, they believe the funding has been limited so it can't expect to accomplish that much. This limitation is also felt by Louisiana, who wants increased funding if 306 funds are to be tied to special national goals (and needs section 306 (e)(2) clarified).

Different from most states, Virginia wants a continuance of 305 funding. This is because they have not yet completed a plan and probably will not in the near future.

Industry³⁶

American Petroleum Institute and the Western Oil and Gas Association have made a loose bond to make their stand. They would like to see a stronger national interest provision to encourage energy facility siting and a more specific and consistent siting process. On consistency they want accelerated action on certifications; i.e., three not six months as under 307(c)(A), and a secretarial over-ride rather than just mediation ability. Actually they would like to see 307(c)(3)(A)&(B) amended so that all oil and gas related activities outside the three mile territorial limit would come under federal jurisdiction alone, and then have federal consistency over OCS activities eliminated. Their fear of being stopped on air quality standards has also prompted them to call for an amendment to 307(c)(11) to exempt these standards on OCS activities.

Florida Power and Light Company and Edison Electric Institute also testified together. They would like affirmative siting plans developed by the states under 305(b)(8). Section 306(c)(8) should be clarified

in their view to require separate consideration of the national interest for energy facilities in order to balance other provisions of the Act designed to protect unique coastal resources. Section 306(e)(2) should also be clarified to assure local regulations do not unreasonably restrict or exclude uses of regional benefit. They also believe 307(c)(3)(A) was misinterpreted by NOAA because it should not apply to alterations or expansion of pre-existing facilities, only new activities. They feel state permits issued pursuant to federal programs are not subject to federal consistency review and that congress should make a clarification of this to avoid abuse by state agencies.

Conservation groups³⁷

National Resources Defense Council wants a clearer national policy (sec. 303) to clarify the conservation thrust of the CZMA, the establishment of stronger and more substantive federal standards, and a termination of all federal funds to a state if it does not meet those standards. In the absence of any "adequate" state program or any program at all, they would like to establish a federal program to which federal activities must be consistent (similar to the NACOA recommendation).

The National Wildlife Federation wants 305(b)(3) to specifically include ecologically fragile areas in the inventories and then protect these areas against development.

The Coast Alliance sees a lack of coherent federal policies to protect all coastal resources and so would like a greater clarification in the appropriate provisions. They also see a fragmentation and lack of coordination among the different levels of government which must be attended to.

The Environmental Defense Fund thinks the CZMA is weakened by administrative misinterpretation because of the stress on a process-

oriented plan of action and the voluntary aspect of state participation. They believe efforts should be directed towards conservation.

Local Government

Local communities are too numerous with too many different ideas for us to go into them all or to sort out any trends. The only exception is that most all would like less State and Federal interventions.

Private interests

Private individuals interested enough in the outcome of these hearings are very limited in number, which may be the reason why the CZMAC said there was a lack of a constituency and why several groups are calling for more public participation.

The American Ports Association³⁸ would like better (in their opinion) permitting procedures and planning for port facilities.

Epting and Laist³⁹ have written several articles on the future of CZM. They see the need for an expanded state role and increased management ability in dealing with CZR. They would like to see more explicit standards or criteria for acceptability of CZM programs to allow for the resolution of difficult conflicts, however, they offer no specific suggestions. They feel the comprehensive approach for planning under the CZMA causes as many problems as it solves and believes the programs need to highlight conflict resolution mechanisms. They believe that consistency determinations mustn't be allowed to over-ride potentially good actions simply because they're not in line with state programs.

Other Voices

The Coastal States Organization⁴⁰ tried to obtain a consensus on what steps should be taken to better the CZM process. They came up with several suggestions that even though there was not complete agreement on all of them, had the most support. These suggestions were the need for more

specificity in national policies and state plans more predictability in siting procedures , better definition of the national interest clause, a stronger special-area-management technique, improved agency coordination and networking, more public participation, and a need to terminate 305 funding. In regards to evaluation of state CZM programs, the policies and objectives of the CZMA should be more clearly defined and funding decisions linked with their attainment.

The Bills before Congress

There are four bills being submitted to Congress, all at approximately the same time. Two of them, S.2622⁴¹ and H.R.6956 are the administrations proposed amendments. The others are the Studds/Murphy bill H.R.6979 and a Senate version which is being patterned after the Studds Bill.

The administration bill amends the CZMA by restating the Findings section (section 302(1), 16 USC 1451) to include the idea that there are new and expanding demands and stresses on the coastal zone. The administration has placed under the national policy section (section 303(b), 16 USC 1452) the specific areas where they would like to see more attention-- protection of natural areas, managed development, public access, priority for uses, urban waterfront redevelopment, greater coordination, and public participation. The administrative grants section (306(a), 16 USC 1455) would be amended to include the phase-down of the federal share and 306(b) would require increasing amounts of the administrative grants to be used for the specifics added in 303(b). The states would then be reviewed on their performance under section 312(a), (b), and (c) and the Secretary of Commerce would be empowered to recall any grants and/or withdraw the state program's approval if the state failed to achieve significant improvements in the areas specified in 303 (b).

The Studds Bill is different from the administrations bill in several ways. The main difference seems to be that the Studds bill will not decrease spending. It will not phase-down the grants and will actually increase the amount of money granted by adding "incentive grants" (section 306 (A)), for states to meet the newly required specifics (which are oriented more towards resource protection than the administrations proposal). However the Studds bill has called for a deadline of 1984 when the new

guidelines must be incorporated into state plans. If this mandatory provision (306(i)) is not met by that date then the bill calls for the DOC to design the regulations for the state and implement them by 1985.

Environmentalists like the Studds bill and Industry likes the administration bill. More participants have lauded the Studd's bill over the administration's bill for it's greater "clarity and substance".⁴² We should not believe that the Studds bill will pass unscathed in Congress though, especially with the recent attempt to decrease federal spending.

LIKELY OUTCOMES

As can be seen there are wide and varied changes proposed and importantly there are large gaps between the various interest groups. There are differences between the environmental groups who see a need for conservation, preservation, and protection of coastal resources, and the energy industry whose position seems to be on a reinterpretation of the consistency clause and the related national interest, yet both see the need for greater intergovernmental coordination and affirmative and more specific planning. Of course, these attitudes and changes are sometimes in opposition to the state governments whose traditional sovereignty might be eroded under many of these proposed changes. The states must contend with their constituents many of whom do not appreciate greater governmental intervention.

To decide who will win or lose under the changes made, if any, we should have some means to judge the strength and validity of any position and thereby be able to gauge its possible acceptance. Englander et al. found four areas against which it is possible to evaluate CZM programs.⁴³ They were policies and goals expressed in the legislation, objectives stated in the administrative guidelines, attitudes and observations of those involved, and statements and problems that led to the original legislation. It would be difficult to use all these to evaluate the many amendments proposed since there have been large changes in the national outlook in recent months. Trying to maintain the original premise of the Act may be difficult unless the Act's implementation is patterned to fit the present circumstances. The fact that there are problems as evidenced by the testimony proves that the Act should be altered to stay in touch with new demands.

To make a discussion of the amendments somewhat easier, they will be divided up into four areas of general concern where we can expect changes or the prevention of changes to be most likely to occur.

Federal Grants

Almost all are in agreement that section 305 funding should be dropped at this time because all the eligible states have participated and there is only a limited need to continue these grants. The ones in disagreement are those states that have not yet completed a program that has a chance of approval.

The issues with section 306 funding are not so much whether to continue it or not but how these funds should be granted in the future. The general consensus among the administrators is that a phase-down of the funds over a five to ten year period would be most constructive. This would mean going from the present 80% matching funding down to 66.6%, to 50%, then to 33.3% and finally a complete halt to these funds. Many states are against this idea because they need the funds as incentive to continue their program.⁴⁴

Since the federal government is dealing with an unstable economy and is cutting back in spending and since getting states to use their own resources would be advantageous, the most likely changes are an end to 305 funds and 306 funds reauthorized on a phase-down schedule.

As an added note, OMB allowed for approximately \$400 million for the next eight years, and would like the schedule described here.⁴⁵

Planning and Management

There are three areas that seem most topical. First is affirmative planning under 305, for areas of particular concern. Using the national policy/interest provisions or the provisions for preservation and restoration of areas, some groups (in particular the conservation and industry groups) have complained that not enough action has been taken. Whether they are right or not about the limited action, the original legislation does not require that affirmative action be taken on any use. Affirmative planning may well be needed in the future when pressures on coastal resources become greater, however, there is little chance such an amendment would be passed this year or in the near future.

This also overlaps with the second area of suggested changes. These changes are substantive, calling for more specificity in the guidelines and CZM programs. As Sarah Chassis has said, the CZMA is too broad and focuses on plans rather than key resources.⁴⁶ The new specificity may be a way to promote greater continuity between programs by having all plans incorporate the same guidelines or procedures. There is no reason not to promote this specificity if the overall functioning or implementation of the CZMA could be improved. However, these changes are not in keeping with the original process-orientation of the Act and each new guideline runs into the problem found originally, which is there are a wide variety of circumstances to deal with and it would be very hard to find a wide constituency for a very specific clause in the guidelines or act. This is not to say the broad guidelines under which states first developed their programs has not caused problems. Many states with approved

programs are finding they don't have the legislative authority to protect or control development on some valuable and fragile resources. Even though CZMP's survived their first court challenge, meaning they have been developed according to the law,⁴⁷ states are finding that in practice they are unable to regulate all activities. So a carefully worded addition to the CZMA or its administrative guidelines calling for more specific planning could conceivably be made. There is a possibility that more specific planning and management will be tied to future funding by using the national interest, but this may not be made mandatory. OCZM knowing this has instead encouraged the use of a portion of the administrative grants to be used to improve substantive management in the four areas found to be of particular concern by the recent FCPR.⁴⁸

The third area of discussion is the mechanism in which states can modify or amend their own programs. This has been done on a state level with a review by the OCZM. Some are afraid this will allow large amends to be made without the lengthy review process dictated for an original plan. The most sensible idea was voiced by the CSO calling for "structured evaluations"⁴⁹ that would assess results of the CZMPs so that appropriate changes could be made as they are needed.

Consistency

Much discussion is directed towards the consistency provision. Many attempt to keep the provisions from being markedly changed, but there are those who would like to see this section of the Act altered to fit their own needs, or to give a stronger voice to one level of government. The lack of trials on the consistency provision does not really allow us to evaluate it properly and many see this as a reason not to judge it too harshly, meaning not to change it yet. Then should the consistency provision be altered? If it is to reflect the outlook of just one sector such as the industry or one level of government then I think not. Even with the importance of industry in a secure energy future, or the presidential rights or powers of some government unit, the consistency provision should remain as a balance between the many sectors and stimulate interaction rather than be used to promote special interests to the exclusion of others.

Consistency is "to ensure that Federal actions are coordinated with CZMPs and are consistent with the enforceable elements of approved CZMPs".⁵⁰ The only action forced is cooperative coordination. I believe this outlook points the way to the most likely changes that will occur in this section of the Act. This change will include all OCS activities under the consistency by adding all prelease activities. There is an expectedly strong opposition to this from the DOI and industry because of what they see as possible delays. The importance of their opposition should not be underestimated, however, there are good reasons to include this new provision in the Act. Broadening the scope of this provision will be welcomed by the states and will be that added incentive for the states to accept the new Federal guidelines discussed previously.

Intergovernmental Coordination

Many participants have called for greater coordination of government actions and responsibilities. This is definitely part of the Act's mandate and was found to be an area of concern by the Federal Coastal Program Review. If the implementation of the Act has not achieved this desired outcome then some changes may be welcome here. The changes being proposed are not all designed for the same purpose however. Some of the changes would mean a greater federal role in CZM and diminished federalism. This will, of course, bring out strong opposition among the local government units. As Rosener said, "Relinquishment of local government control will not come willingly"⁵¹ On their side the local communities see coordination as less federal intervention and greater consistency of federal and state actions with local plans.

If all activities were pre-arranged and pre-discussed between the various government units we would still expect disagreements to occur at some point but who should have the final say at that point is unclear at this time. This leads into one of the tougher questions, that is who should have the final and binding authority in decisions effecting the coast. These decisions would effect many sectors of public and private interests and so would need a large constituency. I believe the answer lies in what Knecht calls the Federal-State CZM partnership.⁵² The expected influx of people and industry into the coastal zone will continually demand a more regional approach. The States cannot perform the management functions alone when Federal agencies and local communities are applying pressures on either side. There must be a combining of efforts with a tool such as the consistency provision to maintain a balance and ensure the "partnership".

CONCLUSIONS

The most likely changes to occur in the CZMA will call for more specificity in the state programs in the areas of protection of ecologically fragile, cultural, historical, and aesthetic areas and resources, improved procedures for facility siting or development, public beach access, and finally greater intergovernmental coordination. There will be an end of 305 appropriations with an end to their reauthorization at the September 30, 1980 deadline but continued 306 funding on a 10 to 5 year phase-down procedure. Broadening of the federal consistency provision, possibly as a balance to the expectedly larger federal role in coastal zone decision-making, may occur, but at the moment this is unlikely.

Knecht presented four options for ways to improve the CZMA,⁵³

1) A "fine tuning", which assumes the CZMA is sound now and requires no amendments. Problems to be corrected are seen in the interpretation which can be changed administratively.

2) Sharpening of the Act's specificity by amendment. This would require more substance in state plans and the application of management processes towards specific goals.

3) Tie Federal financial support to a state's willingness to deal affirmatively with the issues of national interest, e.g., wetlands protection, energy facility siting, fishery management.

4) Amend the Act to include national standards and make the requirements mandatory for all states.

This author believes any amends that are passed this year will be in line with second option. Too many people are complaining for us to believe that the CZMA needs no amends and on the other side I see tying financial support to the amends as politically unacceptable by the majority of congressmen for this year, although the present economic problems may prove me wrong.

These are the indicated changes, however in the matter of funding there is nothing to ensure that final appropriations will be made where the reauthorizations allow it or even that the new authorizations will be made at this time. There is evidence that political activity may overshadow the necessity for reauthorization this year. It is possible that in this election year funding could be extended as is for another year to avoid confrontations. Another possibility is that many of the amendments could be accomplished through administrative action and so make a debate less time-consuming or costly.

The Act has been criticised as a paper tiger because while looking for a balance it has not come to grips with some important issues. The new specificity suggested in some of the amends could help in this area. There should be a clarification of the prospective protective measures for preserving important natural resources and a clarification of development procedures to increase predictability for any activity. More of the coastal resources will be coming under scrutiny for use as the predicted influx of population and industry continues. Ever more detailed plans will be needed to avoid some of the mistakes of the large urban areas. However, pressure will not be even everywhere across the country so the actions taken will not be the same across the board. Because of this the specifics probably will not be tied to funding unless the provisions are actually rather general in nature in their scope or the funding tie is loose, i.e., non-mandatory.

The problem of coordination between government units has not yet been clearly defined or discussed as to the specifics except for cooperative permitting procedures. It is actually much bigger in scope than could be simply dealt with in the CZMA as the recent FCPR proved. Improved coordination will probably not be covered directly in the amendments.

Indirect attention to this problem will come by an enlarged federal role through the national policy, to allow greater regulation in decision-making, and the possibility of a stronger state-side consistency provision to balance out the Federal-State partnership.

A larger role for consistency and decreased funding will almost force states to further develop their programs and their ability to implement them on their own. The fact that many state governments have notably large revenues now, even without federal assistance, will help in this transition. However, the possibility of reactionary movements among the local community decision-makers could reverse some of the gains the CZMA has achieved towards a broader outlook.

Lack of sufficient time for evaluating the implementation of state programs has made it difficult to distinguish trends but there are obviously problems that need resolve if the CZMA is to perform as originally hoped for. The national outlook has changed in several areas such as new policy options for energy and economics. How these policies should be taken into account and translated through the provisions of the CZMA is unclear, however.

A problem with the Act that has nurtured some of these difficulties is there is still no clear definition of what is, or is in, the national interest, leaving us with some large gray areas.⁵⁴ If it is closely defined in purpose and scope, some claim this will lead to federal intervention, and decreased federalism, and so take away the powers of traditional home rule. However, there are avenues towards broader intergovernmental coordination and cooperation and not just through the CZMA either, but through other current legislation and litigation.⁵⁵

The CZMA is really the first of its kind and although the premise on which it is based is worth attempting, the present procedure to attain

the objective does not seem to be enough. Many of the participants realize this and are looking for additional measures in which the goals might be better defined and/or alternate methods used to achieve these goals. There are others though who feel the CZMA has stepped too far into areas traditionally the realm of others. There are problems with the present state of CZM or there would not be so many voices calling for changes. Some believe these arguments prove how well CZMPs have balanced the different interests, but not all the voices are in opposition to each other.

One of the fascinating aspects of the CZMA is that it can incorporate so many varied interests. This has also been one of the major stumbling blocks in its way, how to handle the enormity and complexity of all these interests and still realize some greater good. To realize these goals without upsetting the balance or losing the constituency, the CZMA should evolve at this time towards a greater federal-state interaction that does not disregard the importance of improved relations with the other sectors. It should also evolve towards greater specificity, especially when dealing with a state's particular problems.

Evolution is a process where the strong survive against whatever new adversity confronts them, over the test of time. Cooperation, epitomized in the consistency provision, and balanced decision-making, allowed for in the process-orientation of the Act, both seem to have survived fairly well and probably for the same reason, they allow flexibility to advance in any direction. What is needed now is the social consciousness which Anne Simon has described in her writing, to ensure the evolution will be directed towards a long-term, and sociably redeemable goal.⁵⁶

FOOTNOTES

1. 16 USC 1451-64; 15 CFR Pts. 920-926.
2. Zile. "A Legislative-Political History of the CZMA" CZM Journal Vol.1 p.236-275. 1975.
3. 16 USC 1452-3.
4. These formats are; 1) state standards for local implementation
2) direct state land and water use controls
3) state review of projects and plans to determine consistency with state program.
from 16 USC 1455(e).
5. Historically those decisions were left to the people directly effected by them by granting local zoning powers under the state's police powers. Unfortunately there are many regional problems that can not be correctly addressed this way.
6. From R. Knechts statement before the House Subcommittee on Oceanography Oct. 9, 1979. It might be noted here that the original wording of the CZMA delimits thirty states and four territories (sec304) however Northern Marianas was added by Presidential decree.
7. Ibid.
8. Ibid.
9. States such as Louisiana, Georgia, Virginia and others have been moving slowly in their development of a program but states such as California and Washington were very quick partly because they had started on their own initiative.
10. Examples are the home rule approach of Texas, the concurrent jurisdictional approach in New Jersey.
11. This education program was designed for high school age people.
12. In testimony before the House Subcomm. on Oceanography, Louisiana and Maine said they would not have initiated a program without the grant incentives from the CZMA.
13. As it now stands those states have been identified as Minnesota, Virginia, and Illinois.
14. Jim Murley, OCZM lobbyist. personal interview.
15. 16 USC 1455-6.
16. Before the Senate Committee on Commerce, Science, and Transportation. April 11, 1979. p.77.
17. 16 USC 1456.

18. personal interview.
19. NACOA. Jan. 1979. A special report to the President and the Congress. "Coastal Zone Management, 1978 - Findings and Recommendations."
20. There are many different opinions on this case. California's view came from their testimony before the Subcomm. on Oceanography during the regional hearings.
21. Knecht in Senate report. see ref.14. p.78.
22. Four bills have been so far submitted.
23. Message presented August 2, 1979.
24. From presentation at the Coastal Society Meeting, Nov. 7, 1979 at Newport, R.I.
25. CZM Newsletter, Nautilus Press. V.10 #32. August 15, 1979.
26. The following information comes from testimony given at the congressional hearings except for OMB which came from CZM Newsletter, V.11 #11 March 12, 1980.
27. Testimony from NACOA before the Senate Commerce Comm. see ref. 16.
28. CZM Advisory Committee. " Public Support for Coastal Zone Managemnet Programs: The Implementation of the CZMA of 1972." U.S. DOC. June 9, 1978.
29. CZM Newsletter, p.4. V.11 #9 Feb.27, 1980.
30. CZM Newsletter, p.5&6. V.11 #8 Feb.20, 1980.
31. From a press release at Boston Feb.4, 1980.
32. H.R. 6979, to be described later.
33. From remarks at the Committee hearings, see ref.16.
34. CZM Newsletter, p.2. V.10 #39 Oct. 3, 1979.
35. Taken from testimony given at various times before the Subcomm. on Ocean.
36. Taken from testimony given before the Subcomm. in Washington, Oct 29-31, 1979.
37. Ibid.
38. Before the Subcomm. in Lousiana during regional hearings.
39. D. Laist and J. Epting. Marine Policy Evolution: A Reference Guide for Coastal Managers. CZM Journal. V.7 #1. P.71 1980.
40. Coastal States Organization. " Coastal Mangement: Options for the 80's - Final Report. Publ. by the CSO. Gloucester Point, Va. 1979.

41. Appendix 1.
42. CZM Newsletter, April 23, 1980.
43. E. Englander, J. Feldmann, and M. Hershman. "Coastal Zone Problems: A Basis for Evaluation." CZM Journal. V.3 #3. p.217-219.
44. The idea of a thrifty Congress is long in coming but the CZMA may not have enough incentives if the funding is not high enough. 208 programs have higher funding.
45. see ref. 26.
46. S. Chasis. "Problems and Prospects of Coastal Zone Management: An Environmental Viewpoint." CZM Journal. V.6#4. p. 273- 1979.
47. API v Knecht, in which the State program was tried on it's legality.
48. FCPR = the Federal Coastal Program Review, initiated by Pres. Carter's Aug.2, 1979 Environmental Message. OCZM sees the possibility of administrative measures to steer clear from the problems of mandatory amendments, from interview with Jim Murley.
49. see ref.40.
50. From the OCZM, CZM Newsletter. p.18, Jan. 15, 1980.
51. J. Rosener. " Intergovernmental Tension in Coastal Zone Management: Some Observations." CZM Journal V.7#1, p.95- 1980.
52. Testimony before the Subcomm. on Oceanography, Oct.9, 1979.
53. As reported by NACOA, see ref.19.
54. The Administration's bill included a new outlook in sec. 302 but this is one of the areas that the CSO found it was unable to define.
55. The CZMA overlaps with other peices of legislation but is the only law so comprehensive.
56. A. Simon. "Who Speaks for the Coast - And Who Listens". CZM Journal V.6#4 p.34 1979.

1 “(f) New and expanding demands for food, energy, min-
2 erals, defense needs, recreation, waste disposal, transporta-
3 tion, and industrial activities in the Great Lakes, territorial
4 sea, and Outer Continental Shelf are placing stress on these
5 areas and are creating the need for resolution of serious con-
6 flicts among important and competing uses and values in
7 coastal and ocean waters.”; and

8 (2) by relettering subsections (f), (g), (h), and (i) as
9 subsections (g), (h), (i), and (j), respectively.

10 DECLARATION OF POLICY

11 SEC. 2. Section 303 of the Coastal Zone Management Act
12 of 1972 (16 U.S.C. 1452) is amended by striking out from
13 subsection (b) “ecological, cultural, historic, and esthetic
14 values as well as to needs for economic development” and by
15 inserting in lieu thereof the following: “the need for (i) pro-
16 tection of significant natural systems such as wetlands, flood-
17 plains, estuaries, beaches, dunes, barrier islands, coral reefs,
18 fish, and wildlife, (ii) management of coastal development to
19 minimize loss of life and property caused by improper devel-
20 opment in flood-prone, storm-surge and erosion-prone areas,
21 and areas of subsidence and saltwater intrusion, (iii) priority
22 consideration for coastal-dependent uses and orderly proc-
23 esses for siting major facilities related to national defense,
24 energy, fisheries development, recreation, ports and transpor-
25 tation, (iv) public access to the coast for recreation purposes,

1 (v) assisting in the redevelopment of deteriorating urban
2 waterfronts and ports, and sensitive preservation and restora-
3 tion of historic, cultural, and aesthetic coastal features, (vi)
4 coordinated and simplified procedures to ensure expedited
5 governmental decisionmaking for the management of coastal
6 resources, (vii) continuing consultation and coordination with
7 and adequate consideration of the views of affected Federal
8 agencies, and (viii) timely and effective opportunities for
9 public participation in coastal management decisionmaking,".

10 ADMINISTRATIVE GRANTS

11 SEC. 3. Section 306 of the Coastal Zone Management
12 Act of 1972 (16 U.S.C. 1455) is amended—

13 (1) by inserting "(i)" within subsection (a) immedi-
14 ately before "for not more than";

15 (2) by inserting within subsection (a) after "such
16 State's management program," the following: "for a
17 five-year period commencing in fiscal year 1978 or the
18 fiscal year of management program approval, which-
19 ever is later, and (ii) for decreasing per centums of the
20 costs of administering such State's management pro-
21 gram for the years following the five-year period de-
22 scribed in subparagraph (i), with the Federal share to
23 reach a level of 33 1/3 per centum or less of the costs of
24 program administration three years after the last year
25 of the five-year period,";

1 (3) by striking out within subsection (b) "*Pro-*
2 *vided*, That no annual grant made under this section
3 shall be in excess of \$2,000,000 for fiscal year 1975,
4 in excess of \$2,500,000 for fiscal year 1976, nor in
5 excess of \$3,000,000 for fiscal year 1977: *Provided*
6 *further*, That no" and inserting in lieu thereof the fol-
7 lowing: "The Secretary shall require States that have
8 completed one or more years of program implementa-
9 tion to devote increasing per centums of their imple-
10 mentation grants each year to activities leading to sig-
11 nificant improvements to meet the coastal management
12 needs identified in section 303(b). No", and
13 (4) by striking out within subsection (b) "*: And*
14 *provided further*, That the" and inserting in lieu there-
15 of "The".

16 REVIEW OF PERFORMANCE

17 SEC. 4. Section 312 of the Coastal Zone Management
18 Act (16 U.S.C. 1461) is amended to read as follows:

19 "SEC. 312. (a) The Secretary shall conduct a continuing
20 review of the performance of coastal States with respect to
21 coastal zone management which shall include evaluation find-
22 ings during each grant period which assess each State's per-
23 formance in the implementation of its management program;
24 the evaluation for each State shall provide a determination of
25 the extent to which State activities (1) address the coastal

1 management needs identified in section 303(b), (2) adhere to
2 the provisions of the program approved by the Secretary, and
3 (3) adhere to the terms of any grant or cooperative agree-
4 ment funded under section 306.

5 “(b) The Secretary may reduce any financial assistance
6 extended under this title and withdraw any unexpended por-
7 tion of such assistance if it is determined that the State is
8 failing to achieve significant improvements in meeting the
9 coastal management needs set forth in section 303(b).

10 “(c) The Secretary may withdraw management program
11 approval and any financial assistance extended under this
12 title and withdraw any unexpended portion of such assistance
13 if (1) it is determined that the State is failing to adhere to and
14 is not justified in deviating from (i) the program approved by
15 the Secretary, or (ii) the terms of any grant or cooperative
16 agreement funded under section 306, and (2) the State has
17 been given notice of the proposed termination or withdrawal
18 and given an opportunity to present evidence of adherence or
19 justification for deviating from its program.

20 “(d) The Secretary shall conduct a periodic review and
21 evaluation of the implementation of the coastal energy impact
22 program provided under section 308.”.

23 ESTUARINE SANCTUARIES AND ISLAND PRESERVATION

24 SEC. 5. Section 315 of the Coastal Zone Management
25 Act of 1972 (16 U.S.C. 1464) is amended—

1 (1) by striking the words "BEACH ACCESS" from
2 the section heading and inserting in lieu thereof the
3 words "ISLAND PRESERVATION", and

4 (2) by striking from subsection (2) the following:
5 "access to public beaches and other public coastal
6 areas of environmental, recreational, historical,
7 esthetic, ecological, or cultural value, and for".

8 BIENNIAL REPORT

9 SEC. 6. Section 316 of the Coastal Zone Management
10 Act of 1972 (16 U.S.C. 1465) is amended—

11 (1) by striking the word "ANNUAL" from the
12 section heading and inserting in lieu thereof the word
13 "BIENNIAL",

14 (2) by striking the language in paragraph (a) im-
15 mediately preceding subparagraph (a)(1) and substitut-
16 ing in lieu thereof the following:

17 "(a) The Secretary shall prepare and submit to the
18 President for transmittal to the Congress on a biennial basis
19 a report summarizing the administration of this title for the
20 preceding two fiscal years. The reports, which shall be
21 transmitted to the Congress not later than April 1 of the year
22 following the biennial period, shall include but not be
23 restricted to";

1 (3) by striking out within subparagraph (a)(4) the
2 following: "or with respect to which grants have been
3 terminated under this title";

4 (4) by inserting immediately after subparagraph
5 (a)(4) the following: "(5) a summary of evaluation find-
6 ings prepared in accordance with subsections (a) and
7 (d) of section 312, and a description of any sanctions
8 imposed pursuant to subsections (b) and (c) of this sec-
9 tion;"; and

10 (5) by renumbering subparagraphs (5), (6), (7), (8),
11 (9), (10), (11), and (12) of subsection (a) as subpara-
12 graphs (6), (7), (8), (9), (10), (11), (12), and (13),
13 respectively.

14 AUTHORIZATION OF APPROPRIATIONS

15 SEC. 7. Section 318 of the Coastal Zone Management
16 Act of 1972 (16 U.S.C. 1467) is amended—

17 (1) by striking subparagraph (a)(1);

18 (2) by renumbering subparagraph (a)(2) as subpar-
19 agraph (a)(1) and amending it to read as follows:

20 “(1) such sums, not to exceed \$50,000,000 for
21 each of the fiscal years ending September 30, 1981,
22 and September 30, 1982, and not to exceed
23 \$215,000,000 for the period beginning October 1,
24 1982, and ending September 30, 1988, as may be nec-

1 essary for the purpose of providing grants under sec-
2 tion 306, to remain available until expended;”;

3 (3) by deleting subparagraph (a)(5);

4 (4) by deleting subparagraph (a)(6);

5 (5) by renumbering subparagraph (a)(7) as subpar-
6 agraph (a)(4) and amending it to read as follows:

7 “(5) such sums, not to exceed \$6,000,000 for
8 each of the fiscal years occurring during the period be-
9 ginning October 1, 1980, and ending September 30,
10 1985, as may be necessary for grants under section
11 315(1), to remain available until expended;”;

12 (6) by renumbering subparagraph (a)(8) as subpar-
13 agraph (a)(5) and amending it to read as follows:

14 “(6) such sums, not to exceed \$10,000,000 for
15 each of the fiscal years occurring during the period be-
16 ginning October 1, 1980, and ending September 30,
17 1982, as may be necessary for grants under section
18 315(2), to remain available until expended;”;

19 (7) by renumbering subparagraph (a)(9) as subpar-
20 agraph (a)(6) and amending it to read as follows:

21 “(7) such sums, not to exceed \$5,000,000 for
22 each of the fiscal years occurring during the period be-
23 ginning October 1, 1980, and ending September 30,
24 1988, as may be necessary for administrative expenses
25 incident to the administration of this title.”;

- 1 (8) by renumbering subparagraphs (a)(3) and (a)(4)
- 2 as subparagraphs (a)(2) and (a)(3), respectively; and
- 3 (9) by striking out within subsection (c) the sec-
- 4 tion number "305."

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